

HOW TO REDUCE YOUR PERSONAL INCOME TAX LIABILITY

An audit of your payroll records has disclosed that California personal income tax (PIT) was not properly withheld from wages paid to your workers. This determination will result in an assessment being issued for the PIT that should have been withheld.

You have an opportunity to gain relief from some or all of the PIT liability and associated penalties and interest through the use of DE 938P, Claim for Adjustment or Refund of PIT. Please read the following information carefully before completing these forms.

Recalculation of PIT Based on W-4/DE 4

You can reduce the PIT assessment and any related penalties and interest by recalculating the amount of PIT that should have been withheld. If the PIT was assessed at the flat rate of six percent by the auditor and you had a signed W-4 or DE 4 from the worker during the time that he/she worked, you can recalculate PIT. You should recalculate by using the filing status and number of allowances that are on the W-4 or DE 4 and by using the appropriate tax withholding table in the California Employer's Guide (DE 44). This recalculation may reduce the PIT assessment and result in a reduction of any penalties and interest that were added to the PIT assessment.

Even if you are able to take advantage of the normal PIT abatement process, it is to your advantage to recalculate the PIT to receive the greatest possible reduction in your assessment.

Recalculation of PIT Based on Single and Zero Allowances (S-0)

Even if you did not have a signed W-4 or DE 4 from the worker, you can take advantage of the recalculation process to reduce your assessment. In this case, you must use a filing status of Single with zero allowances (S-0) to recalculate the PIT. This will generally reduce the amount assessed below the six percent level.

Recalculation of PIT Based on Sampling Using S-0 or W-4/DE 4

If you have 50 or more workers covered by the PIT assessment, you may use a reasonable sample to recalculate the PIT that should have been withheld. The sample must include at least four complete pay periods during the most recent calendar year for which the unreported wages are equal to or greater than the average unreported wages per pay period. You must schedule the individual wage payments for the four pay periods, calculate the PIT that should have been withheld from each wage payment based on the W-4/DE 4 or S-0 filing status, and calculate the percentage of total PIT to the total unreported wages for the four pay periods. Your assessment will then be adjusted if the PIT percentage from the sample is less than the six percent used in the audit assessment.

Normal PIT Abatement Process

You can also be relieved of the full amount of PIT assessed for any worker who certifies that he or she has reported the wages on his or her California state income tax return. The worker must complete the worker portion of the DE 938P, items (5) through (7).

The normal PIT abatement process does not relieve you from any penalties already imposed on the PIT assessment or from certain portions of the interest on the PIT assessment. That is why it is to your advantage to recalculate PIT, even if the normal PIT abatement process is followed.

Recalculation of Interest

Interest will be recalculated (lowered) when the worker certifies that he/she made quarterly estimates to the Franchise Tax Board (FTB). The worker can certify to this in the worker portion of the DE 938P. Interest is also recalculated when the worker certifies that he/she has filed his/her California state income tax return. Generally, you are relieved of any interest charged for periods after the worker paid the taxes or filed the return.

Special Instructions for Current Year PIT Assessments

If assessed PIT includes wages for the current year, separate DE 938Ps must be prepared for those wages. Hold the forms until the workers file their California income tax returns. If the workers filed quarterly estimates, they may sign the DE 938P now.

OTHER INFORMATION

Assessments Including Unemployment and Disability Insurance or Employment Training Tax

The relief granted for PIT through the use of the DE 938P process does **not** in any way adjust the assessed liability for unemployment insurance, disability insurance or the employment training tax.

Finality Date of the Assessment

It is to your benefit to complete the DE 938Ps quickly. Assessments normally become final thirty days from the date they are issued unless a petition is filed with the California Unemployment Insurance Appeals Board within the thirty days. When the assessment becomes final, an additional penalty of ten percent of any unpaid tax is added to the liability. The DE 938P PIT adjustments are considered as partial payment of the assessment.

Therefore, if the forms are returned prior to the finality date of the assessment, the tax liability assessed will be adjusted, thereby reducing the liability on which the ten percent penalty is calculated.

No Extension of Petition Rights

A complete explanation of your appeal rights will be included with the official notice of assessment (DE 2176, Employer Account Statement). If you do choose to file a petition for reassessment, the petition must be filed within 30 days from the date of the assessment.

The time limits for the filing of a petition for reassessment are not extended during the abatement process. If you wish to file a petition for reassessment, you should do so prior to the finality date of the assessment.

Additional Information

When you have completed the forms, send them immediately to the office shown on the front of the DE 938P.

Please contact the auditor if you:

- cannot secure the signatures of the workers.
- cannot recompute the tax.
- need assistance in completing any of the processes.

If you cannot secure the workers' signatures, EDD will attempt to verify the workers' payment of the tax with FTB for those workers who are no longer working for you. However, verification with FTB is possible only if the DE 938Ps are submitted within four years after the end of the tax year for which the verification is being requested. For example, verification of wages paid during 1995 must be requested before the end of 1999.

Equal Opportunity Employer/Program. Auxiliary services and assistance available to persons with disabilities.
